PERANTARA PROPERTIES SDN BHD v. JMC- KELANA SQUARE & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
DAVID WONG DAK WAH JCA
UMI KALTHUM ABDUL MAJID JCA
PRASAD SANDOSHAM ABRAHAM JCA
[CIVIL APPEALS NO: W-02-1326-08-2014 & W-02(W)-1655-10-2015]
4 MARCH 2016

LAND LAW: *Strata title – Common property – Developer excluded car parks from being common property in sale and purchase agreements in 1995 – Whether developer exercised rights pursuant to concept of 'freedom of contract' – Fundamental rights – Building and Common Property (Maintenance and Management) Act 2007 ('Act') made car parks as common property – Whether Act had retrospective effect*

STATUTORY INTERPRETATION: *Construction of statutes – Intention of Parliament – Contract entered into before Building and Common Property (Maintenance and Management) Act 2007 ('Act') came into effect – Whether Act had retrospective effect – Whether court must give regard to Federal Constitution – Whether contract legal at time it was entered into – Federal Constitution, art. 13*

The defendant ('appellant') was the developer of Kelana Square which comprised of commercial units and car parks, whilst the plaintiff ('respondent') was the Joint Management Body of Kelana Square, formed under the Building and Common Property (Maintenance and Management) Act 2007 ('BCPA'). Upon the forming of the respondent, the appellant handed over various facilities of the development to the respondent save and except the car parks for the reason that they had been excluded from the common property through the sale and purchase agreements entered between the purchasers and the appellant in 1995 ('1995 SPA'). When the BCPA came into force in 2007, car parks in any development with common facilities were made common property. Hence, the dispute over the ownership of the car parks between the parties. The respondent contended that by virtue of the enactment of the BCPA, car parks were deemed to be common properties and since the BCPA required common properties to be managed by the joint management body, the car parks must be returned to the respondent. However, the appellant contended that it was the owner of the car parks by virtue of the 1995 SPA entered prior to the enactment of the BCPA and that the provisions of the BCPA could not have retrospective effect to override the provisions in the 1995 SPA. The trial judge held, *inter alia*, that the exclusion of the car parks as common property as defined in the SPA was contrary to the provisions of the BCPA and the exclusion should cease to have effect. The trial judge thus ordered that the car parks be surrendered to the respondent. The appellant appealed against the said decision. On the other hand, the respondent appealed against the trial judge's refusal to order the appellant to repair the defects and damages at the

basement car parks. The respondent also included an alternative prayer of reimbursement of monies spent on maintenance of the car parks by the respondent if the court found that the car parks belonged to the appellant.

Held (allowing appellant's appeal with costs; dismissing respondent's appeal with no order as to costs)
Per David Wong Dak Wah JCA delivering the judgment of the court:

(1) The effect of the trial judge's construction of s. 44 read with the definition of 'common properties' in s. 2 of the BCPA was a blatant amendment to terms and conditions of the 1995 SPA. It is trite law that the courts cannot rewrite contracts when they are freely entered into. The 1995 SPA were perfectly legal agreements at the material time. There were no common law or statute law which prohibited the same. Hence, when the purchasers and the appellant entered into the agreements, they were exercising their rights pursuant to the concept of 'freedom of contract', which are fundamental rights. (paras 15 & 18)

(2) In construing provisions of a statute, regard must be given to the Federal Constitution ('Constitution'). The relevant presumption is that the Parliament does not intend to invade the rights accorded in the Constitution. To sustain the respondent's contention, the provisions contained in the BCPA would contravene art. 13 of the Constitution. The provisions of the BCPA did not apply to the 1995 SPA. Thus, the proprietary rights in the car parks of the appellant remained with it pursuant to the SPA signed with the purchasers. (paras 19 & 20)

(3) There was no evidence tendered in court that the defects were discoverable within the defect period of 12 months. Hence, the respondent's appeal was dismissed with no order as to costs. The respondent's alternative prayer did not come into play as, at the High Court, it was found that the car parks belonged to the respondent. (paras 23-25)

***Bahasa Malaysia** Headnotes*

Defendan ('perayu') adalah pemaju Dataran Kelana yang merangkumi unit-unit komersial dan parkir kereta, manakala plaintif ('responden') adalah Badan Pengurusan Bersama Dataran Kelana, yang dibentuk di bawah Akta Bangunan dan Harta Bersama (Penyenggaraan dan Pengurusan) 2007 ('Akta'). Selepas pembentukan responden, perayu menyerahkan beberapa kemudahan pemajuan tersebut kepada responden kecuali parkir kereta atas alasan ia dikecualikan daripada harta bersama melalui perjanjian jual beli yang dimasuki antara pembeli-pembeli dan perayu pada 1995 ('PJB 1995'). Apabila Akta tersebut berkuat kuasa pada 2007, parkir kereta dalam mana-mana pemajuan dengan kemudahan bersama dijadikan harta bersama. Oleh itu pertikaian berkaitan dengan milikan parkir kereta timbul antara pihak-pihak yang terlibat. Responden menghujahkan bahawa berikutan

penggubalan Akta, parkir kereta dianggap harta bersama dan oleh sebab Akta memerlukan harta bersama diuruskan oleh badan pengurusan bersama, parkir kereta tersebut mesti dikembalikan kepada responden. Walau bagaimanapun, perayu menghujahkan bahawa ia adalah pemilik parkir kereta berikutan PJB 1995 yang dimeterai sebelum penggubalan Akta dan bahawa peruntukan Akta tersebut tidak berkuat kuasa secara retrospektif untuk mengatasi peruntukan PJB 1995. Hakim bicara memutuskan, antara lain, bahawa pengecualian parkir kereta sebagai harta bersama seperti yang didefinisikan dalam PJB bertentangan dengan peruntukan Akta dan pengecualian tersebut tidak mempunyai kesan. Oleh itu, hakim bicara memerintahkan bahawa parkir kereta diserahkan kepada responden. Perayu merayu terhadap keputusan tersebut. Sebaliknya, responden merayu terhadap keengganan hakim bicara memerintahkan perayu membaiki kecacatan dan kerosakan di parkir kereta bawah tanah. Responden juga memasukkan permohonan alternatif bagi pembayaran semula wang yang dibelanjakan bagi menyenggara parkir kereta tersebut oleh responden jika mahkamah mendapati bahawa parkir kereta tersebut milik perayu.

Diputuskan (membenarkan rayuan perayu dengan kos; menolak rayuan responden tanpa perintah untuk kos)

Oleh David Wong Dak Wah HMR menyampaikan penghakiman mahkamah:

(1) Kesan pentafsiran s. 44 dibaca bersama-sama dengan definisi 'harta bersama' dalam s. 2 Akta oleh hakim bicara adalah satu pindaan terang-terangan terma-terma dan syarat-syarat PJB 1995. Adalah undang-undang matan bahawa mahkamah tidak boleh menulis semula kontrak apabila ia dimasuki dengan rela. Perjanjian jual beli 1995 adalah perjanjian yang sah pada masa itu. Tiada common law atau undang-undang statut yang menghalangnya. Oleh itu, apabila pembeli-pembeli dan perayu memasuki perjanjian-perjanjian tersebut, mereka melaksanakan hak mereka menurut konsep 'kebebasan berkontrak', yang merupakan hak asasi.

(2) Dalam mentafsir peruntukan-peruntukan statut, Perlembagaan Persekutuan ('Perlembagaan') mesti diambil kira. Anggapan relevan adalah bahawa Parlimen tidak berniat melanggar hak yang diberikan dalam Perlembagaan. Mengekalkan hujahan responden, bermaksud peruntukan dalam Akta akan melanggar per. 13 Perlembagaan. Peruntukan Akta tersebut tidak terpakai kepada PJB 1995. Oleh itu, hak milikan dalam parkir kereta perayu kekal miliknya menurut PJB yang dimeterai dengan pembeli-pembeli.

(3) Tiada keterangan dikemukakan di mahkamah bahawa kecacatan boleh ditemui dalam tempoh 12 bulan kecacatan. Oleh itu, rayuan responden ditolak tanpa perintah untuk kos. Permohonan alternatif responden tidak boleh dibenarkan kerana di Mahkamah Tinggi, parkir kereta diputuskan milik responden.

Case(s) referred to:

B Surinder Singh Kanda v. The Government Of The Federation Of Malaya [1962] 1 LNS 14 PC ***(refd)***

Badan Pengurusan Bersama Paradesa Rustika v. Sri Damansara Sdn Bhd [2013] 9 CLJ 813 FC ***(refd)***

Hancock and Others v. BW Brazier (Anerley) Ltd [1996] 1 WLR 1317 ***(refd)***

Pepper v. Hart [1993] AC 593 ***(refd)***

Teh Khem On & Anor v. Yeoh & Wu Development Sdn Bhd & Ors [1996] 2 CLJ 1105 HC ***(refd)***

Legislation referred to:

Building and Common Property (Maintenance and Management) Act 2007, ss. 2, 44, 45(1)

Federal Constitution, art. 13

Interpretation Acts 1948 and 1967, s. 17A

(Civil Appeal No: W-02-1326-08-2014)

For the appellant - Malik Imtiaz Sarwar (Ashok Kandiah & Surendra Ananth with him); M/s Kandiah Partnership

For the respondent - Su Tiang Joo (R Jeyasingam & Nasema Jalaludheen with him); M/s BH Lawrence & Co

(Civil Appeal No: W-02(W)-1655-10-2015)

For the appellant - Su Tiang Joo (R Jeyasingam & Nasema Jalaludheen with him); M/s BH Lawrence & Co

For the respondent - Malik Imtiaz Sarwar (Ashok Kandiah & Surendra Ananth with him); M/s Kandiah Partnership

[Editor's note: For the High Court judgment, please see JMC - Kelana Square v. Perantara Properties Sdn Bhd [2014] 1 LNS 1085 (overruled in part).]

Reported by S Barathi

JUDGMENT

David Wong Dak Wah JCA:

Appeal 1326

[1] This appeal raises a short but an important and interesting point relating to the manner as to how provisions in a statute should be construed. The statute in question is the Building and Common Property (Maintenance and Management) Act 2007 ("BCPA 2007").

[2] The relevant factual context in which this dispute is premised on is simply this. The appellant was the developer of Kelana Square which comprised of commercial units and car parks. The respondent is the Joint Management Body of Kelana Square formed under the BCPA 2007.

[3] Upon the forming of the respondent, the appellant handed over to the same various facilities of the development to the respondent save and except the car parks. The reason for the exclusion of the car parks was that they had

been excluded from the common property through the sales and purchase agreements of the commercial units in Kelana Square entered between the purchasers and the appellant around 1995. The appellant was then able to rent the car parks out back to the purchasers or third parties for a fee.

[4] The relevant provision of the sales and purchase agreements excluding the car parks is cl. 5.08 which reads as follows:

> 5.08 Retention of Car Park, Food Court and Deli
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> Notwithstanding the sale of the Unit to the Purchaser and the sale of the parcels of office and/or retail units comprised in the Shopoffice Project, the Purchaser agrees and confirms that all surface car parks and covered car parks (including the basement parking and any other parking) in the Shopoffice Project and the food court and deli situated on the ground level and plaza level respectively shall belong to the Vendor and shall not be included into the sale of the Unit herewith whether as an accessory unit or Common Property.

[5] When BCPA 2007 came into force on 12 April 2007, s. 2 defined "common property" as this:

> "common property", in relation to a development area, means so much of the development area as is not comprised in any parcel, such as the structural elements of the building, stairs, stairways, fire escapes, entrances and exits, corridors, lobbies, fixtures, and fittings, lifts, refuse shutes, refuse bins, compound drains, water tanks, sewers, pipes, wires, cables and ducts that serve more than one parcel, the exterior of all common parts of the building, playing fields and recreational area, driveways, car parks, and parking areas, open spaces, landscape areas, walls and fences, and all other facilities and installations and any part of the land used or capable of being used or enjoyed in common by all the occupiers of the building;

Parliament thus had seen it fit to make car parks in any development with common facilities as common property.

[6] Contrast to the aforesaid definition is the definition contained in the sales and purchase agreements entered between the appellant and the purchasers which prescribed as follows:

> Common Property
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> means, in relation to the Shopoffice Project, so much of the area in the Shopoffice Project as is not comprised in any Unit (including any accessory Unit) or any provisional blocks as shown in the approved Building Plans, including but not limited to such facilities and services stipulated in the Fifth Schedule hereto which are reserved for the use and enjoyment of the purchasers of the Units comprised in the Shopoffice Project, but excluding:
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> (a) all surface car parks demarcated or constructed in or about the Shopoffice Project and all covered car parks (including the basement car parks and any other car parks); and

(b) the food court and deli which are situated on the ground level and Plaza level;

in the Shopoffice Project".

[7] Two other relevant provisions of the BCPA 2007 in this dispute are s. 44 of the BCPA 2007 which provides as follows:

> On the coming into operation of this Act, in a local authority area or part of a local authority area or in any other area, the provisions of any written law, contracts and deeds relating to the maintenance and management of buildings and common property in as far as they are contrary to the provisions of this Act shall cease to have effect within the local authority area or that other area.

and s. 45(1) of the BCPA 2007 which provides as follows:

> The provisions of this Act shall have effect notwithstanding any stipulation to the contrary in any agreement, contract or arrangement entered into after the commencement of this Act.

[8] The dispute is of course the ownership of the car parks.

[9] The appellant's contention before the High Court and here is simply that it is the owner of the car parks by virtue of the sales and purchase agreements entered prior to the enactment of the BCPA 2007. Further the provisions in BCPA 2007 cannot have a retrospective effect to override the provisions in the 1995 sales and purchase agreements.

[10] As for the respondent, it is contending that by virtue of the enactment of the BCPA 2007 car parks are deemed to be common properties and hence, since the BCPA 2007 required common properties to be managed by the joint management body, the car parks must be returned back to the respondent. The aforesaid contention is premised on ss. 2, 44 and 45 of the BCPA 2007 which in the view of the respondent's counsel had the retrospective effect of changing the provisions of the 1995 sales and purchase agreements.

[11] The learned judge in the High Court sustained the contention of the respondent. This is what he said:

> 51. The question to be answered in this case is what is the position prior to the coming into force of BCPA 2007 in respect of the SPA to exclude car parks as common property? In my judgment, the exclusion of car parks as common property as defined in the SPA are contrary to the provisions of this BCPA 2007 and the exclusion shall cease to have effect.
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> 52. The definition of the common property in the agreements is inconsistent with the definition of common property under the BCA 2007. As such, based on this inconsistency alone, the definition under the agreements shall cease to have effect and the car parks ought to be surrendered to the Plaintiff together with the income that the Defendant has generated from renting out the car park since the incorporation of the Plaintiff until to date.

A 53. Section 44 of BCPA 2007 uses the words shall cease to have effect within the local authority area or that other area. Therefore it is imperative to find that it is the intention of the Legislature to require that the definition of common property in the Act relating to the maintenance and management of buildings and common property must be followed. The Legislature further intended that provisions of any written law, contracts
B and deeds which are contrary to the provisions of this Act shall cease to have effect. My considered opinion is that the intention of the Legislature is to have the uniformity and well organised maintenance and management of buildings and common property and to keep it in a state of good and serviceable repair which duty is imposed on the Plaintiff as the Joint Management Body of Kelana Square after it has formed to do.
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54. Further, I agree with the Plaintiff's submission that the National Land Code, the Strata Titles Act 1985 and the BCA 2007 do not recognise any ownership of land other than that which is held under a title, strata title or common property.

D 55. There can only be parcels, accessory parcels and common property. The Defendant in this suit is attempting to create a fourth unrecognised claim to property for the car parks but has not provided any evidence of title (or applications for title) to the same during the trial.

[12] The learned judge then made the following orders:

E (a) That the car parks in Kelana Square are part of the common property of Kelana Square;

(b) The car parks be surrendered to the plaintiff (respondent) together with the income generated from renting out the car parks from the date of incorporation of the plaintiff (respondent) until to date;
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(c) That the plaintiff (respondent) is to take immediate action to conduct the necessary test to determine the cause of defects and to rectify the defects and damages at the third basement of the car parks in Kelana Square;

(d) Costs of RM30,000; and

G (e) The defendant's/appellant's counterclaim is dismissed with costs.

Our Opinion

[13] As stated in our opening remark, the task before us is one of interpretation of statute and the starting point must be s. 17A of the
H Interpretation Acts 1948 and 1967 which reads as follows:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

I **[14]** Section 17A embodies the concept of purposive approach which was explained by the House of Lords in *Pepper v. Hart* [1993] AC 593 (by majority) through Lord Griffiths as this:

> The ever increasing volume of legislation must inevitably result in ambiguities of statutory language which are not perceived at the time the legislation is enacted. The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.

We are fully aware that England does not have a s. 17A but what Lord Griffiths said above describes what we understand as the purposive approach to interpreting statute. With that we now look at the aforesaid provisions.

[15] The effect of the learned judge's construction of s. 44 read with the definition of "common properties" in s. 2 of the BCPA 2007 is a blatant amendment to the terms and conditions of the 1995 sales and purchase agreements. That said, His Lordship's view on face value can be said to have merit as s. 44 of the BCPA 2007 does contain the words "shall cease to have effect", giving rise to a reasonable inference that BCPA 2007 is a retrospective legislation to eradicate the practise of developers like the appellant from retaining car parks as common properties.

[16] On the finding of the retrospective effect of BCPA 2007 by the learned judge, we with respect find ourselves bound by the decision of the Federal Court in *Badan Pengurusan Bersama Paradesa Rustika v. Sri Damansara Sdn Bhd* [2013] 9 CLJ 813 ("*Rustika*") where Zulkefli Makinudin Chief Judge of Malaya said as follows:

> [16] It is therefore clear that the provisions of the Act do not have retrospective effect. The requirement in relation to the opening and maintenance of the building maintenance account in our view did not apply to the respondent as the condominium had long been completed, and possession of the individual units had been handed over to the purchasers more than seven years earlier. On this point the question of giving the provision of the Act a purposive interpretation as suggested by learned counsel for the appellant does not arise as the provision of the law is very clear. It is a trite proposition that an Act of Parliament only comes into operation from the date the Act provides for the same. Section 19 of the Interpretation Acts 1948 and 1967 provides that:
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> (1) The commencement of an Act or subsidiary legislation shall be the date provided in or under the Act or subsidiary legislation or, where no date is provided, the date immediately following the date of its publication in pursuance of section 18.

A (2) Acts and subsidiary legislation shall come into operation immediately on the expiration of the day preceding their commencement.

There is therefore no basis or no room for an argument that the Act has retrospective application as there is no indication to the contrary within its four corners.

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[17] We are aware that the learned judge had sought to distinguish the aforesaid case but with respect we agree with the submission of learned counsel for the appellant that the judgment of *Rustika* cannot be distinguished from this case. For clarity, this is what learned counsel for the appellant said:

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30. In *Rustika*, the Federal Court had unequivocally concluded that the provisions of the BCPA do not have retrospective effect. In supporting its said conclusion, the apex court had noted that there "Is no indication to the contrary within its four corners" to say otherwise.

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30.1 *Rustika* concerned the decision of the Commissioner of Buildings pursuant to section 16, BCPA, who decided that the developer owed the JMB a certain sum. The sum owed was in relation to a shortfall in monies collected by the developer towards the sinking funds, which formed part of the building maintenance account[35];

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30.2 The principal issue in the Federal Court was the status to be accorded to the monies collected by the respondent as the developer for the purposes of repairs and maintenance of the condominium prior to the coming into force of the BCPA[36];

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30.3 A central argument put forth by counsel for the Appellant in the appeal was that the BCPA could be applied retrospectively so as to oblige the developer to account for such monies to the Commissioner pursuant to s. 21(1), BCPA[37];

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30.4 In addressing that argument, the Federal Court had undertook a clear and cogent analysis as to the retrospective application of the BCPA. The court ultimately decided that the BCPA does not have retrospective effect[38].

31. It is therefore not correct to say that *Rustika* was concerned only with the maintenance account and the Commissioner of Building's Jurisdiction. It is apparent that one of the main arguments taken before the Federal Court was that the BCPA could be applied retrospectively. It is equally clear that in considering that contention, the Federal Court

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undertook a comprehensive evaluation of the BCPA to determine whether it could be applied retrospectively. This would necessarily mean that the Federal Court considered section 44 and 45, BCPA. Further, the court did not limit its said analysis to the sections of the BCPA that were in issue. The determination of the Federal Court on the point of retrospectivity was as such very much a part of the *ratio* decided of the decision.

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[18] Further it is significant that the 1995 sales and purchase agreements at that particular time were perfectly legal agreements. There were no common law or statute law which prohibited the same. Hence when the purchasers and the appellant entered into those agreements they were exercising their rights pursuant to the concept of "freedom of contract" as submitted by learned counsel. These rights are fundamental rights and the courts must presume that Parliament would not invade such rights unless clear words are used. We find no such clear words in BCPA 2007. The parties knew exactly what the bargains were when they entered into the 1995 sales and purchase agreements and it is trite law the courts cannot rewrite contracts when they are freely entered into.

[19] There is no doubt that should we sustain the respondent's contention, we would be taking away the proprietary rights in the car parks of the appellant. Could this be done by an Act of Parliament? It must not be forgotten that we have a democratic system where the Federal Constitution is supreme as opposed to Parliamentary democracy where Parliament is supreme. Hence in construing provisions of statute regard must be given to the Federal Constitution. The relevant presumption here is simply that Parliament did not intend to invade the rights accorded in the Federal Constitution. The relevant article in the Federal Constitution here is art. 13 which reads as follows:

> (1) No person shall be deprived of property save in accordance with law.
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> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[20] Hence it is our view that to sustain the respondent's contention, the provisions contained in BCPA 2007 would contravene art. 13 of the Federal Constitution. So as not to invalidate the provisions in BCPA 2007, we hold that the aforesaid provisions do not apply to the 1995 sales and purchase agreements. Thus the proprietary rights in the car parks of the appellant remain with it pursuant to the sales and purchase agreements signed with the purchasers. We are fortified in our approach by the Privy Council through the advice of Lord Denning in *B Surinder Singh Kanda v. The Government Of The Federation Of Malaya* [1962] 1 LNS 14; [1962] MLJ 169 where he said:

> In a conflict of this kind between the existing law and Constitution, the Constitution must prevail. The Court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution.

[21] Accordingly, we allow the appeal only in respect of the issue of car parks with costs in the sum of RM30,000 for here and below. We also order that High Court orders pertaining to the car parks be set aside. As for the dismissal of the appellant's counterclaim by the learned judge, there was no appeal and hence it is affirmed. Finally, we order that the deposit to be refunded to the appellant.

A **Appeal By Respondent - 1655**

[22] This appeal by the respondent relates to the refusal by the learned judge to order the appellant to repair the defects and damages at the basement car parks in Kelana Square. The refusal of the learned judge is premised on his finding that the defect liability had expired on 1 December 2001.

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[23] Learned counsel for the respondent however referred us to the cases of *Teh Khem On & Anor v. Yeoh & Wu Development Sdn Bhd & Ors* [1996] 2 CLJ 1105; [1995] 2 MLJ 663 and *Hancock and Others v. BW Brazier (Anerley) Ltd* [1996] 1 WLR 1317. In the latter case, Lord Denning MR held:

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> ... if a builder has done his work badly, and the defects afterwards appear, he is not excused from liability except by clear words. I am of the opinion that clause 11 is no defence to the builder here. It applies only to defects which the purchaser discovers within six months, not those which discovers afterwards ... There is nothing in clause 11 to take away the right of a man to sue in respect of structural defects which were not
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> discoverable within six months. It does not, therefore take away the right of the purchaser here.

[24] We have no doubt that what was stated by Lord Denning represents the law in this country. However, when we asked learned counsel for the respondent whether there is any evidence tendered in court that the defects

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were not discoverable within the defect period of 12 months, we were given a "negative" answer. That being the case, we are constrained to and do dismiss the appeal of the respondent with no order as to costs.

Alternative Relief

F **[25]** The respondent had in its statement of claim included an alternative prayer of reimbursement of monies spent on maintenance of the car parks by the respondent if the court found that the car parks belong to the appellant. At the High Court, the learned judge had found that the car parks belong to the respondent, hence this alternative prayer did not come into play.

G **[26]** As we have now allowed this appeal, we must give effect to the alternative prayer contained in prayer 14(vi) in the statement of claim. Respective counsels, after discussion between counsels and the court, agreed that the alternative prayer 14(vi) be remitted back to High Court to determine the quantum of the compensation, which we do so order now.

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